

IN THE COURT OF APPEALS OF IOWA

No. 9-195 / 08-1502
Filed April 8, 2009

DONALD MCGRANE,
Plaintiff-Appellant,

vs.

KEVIN MALONEY,
Defendant-Appellee.

Appeal from the Iowa District Court for Delaware County, Lawrence H. Fautsch, Judge.

Plaintiff appeals the district court's ruling on his petition for a declaratory judgment interpreting an easement. **AFFIRMED.**

William D. Werger, Manchester, for appellant.

Raymond R. Stefani II and Thomas F. Ochs of Gray, Stefani & Mitvalsky, P.L.C., Cedar Rapids, for appellee.

Considered by Sackett, C.J., and Potterfield, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

ROBINSON, S.J.**I. Background Facts & Proceedings**

Donald McGrane and Kevin Maloney each own one-half of a quarter section of land in rural Delaware County near the Maquoketa River. After the county abandoned a roadway, McGrane's father, Leo McGrane needed a way to access his eighty-acre tract. Leo obtained an easement on July 27, 1955, "along the vacated public road" on property now owned by Maloney "for all lawful purposes connected with the use and enjoyment of said premises of the second party as farm land, but for no other purposes."

The current owner, Donald McGrane, has used his land for pasture, a hay field, row crops, and for cutting firewood, and has used the easement without dispute to access his land for these purposes. However, McGrane and his permittees have used the easement to access McGrane's land for hunting and ATV riding. Maloney objected to use of the easement for any purposes other than planting crops, harvesting crops, haying, and livestock. In particular, Maloney objected to hunters using the easement.

On June 13, 2007, McGrane filed a petition for a declaratory judgment against Maloney, asking the court "to adjudicate the nature of the easement rights granted and to clarify the respective rights and obligations of the parties."

The district court determined:

The only real dispute involves the scope of the easement. Plaintiff and some of his relatives and friends have used the easement to hunt and ride ATVs on Plaintiff's land. On rare occasions, they have gone on the Defendant's property. Plaintiff argues that hunting is legal on farm property so it is a legitimate use of farm land. While this may be true, it cannot be said that hunting

is a use of the property “as farm land.” Also, this is consistent with the language of the easement which states “but for no other purposes.”

The court concluded “the easement in question limits the Plaintiff to access to his property for any and all activities related to his farming operations.” McGrane has appealed the decision of the district court.

II. Standard of Review

This case was brought as an action in equity. In equity cases, our review is de novo. Iowa R. App. P. 6.4. In equity cases we give weight to the fact findings of the district court, especially when considering the credibility of witnesses, but are not bound by such factual findings. Iowa R. App. P. 6.14(6)(g).

III. Merits

“An easement is a liberty, privilege, or advantage in land without profit, existing distinct from ownership.” *Hawk v. Rice*, 325 N.W.2d 97, 98 (Iowa 1982). “The one who enjoys the easement must use it according to its terms; the one who has granted it must not interfere with the rights conferred.” *Krogh v. Clark*, 213 N.W.2d 503, 506 (Iowa 1973). A party’s use of an easement must not place a greater burden on the servient estate than was contemplated at the time of the formation of the easement. *Keokuk Junction Ry. Co. v. IES Indus, Inc.*, 618 N.W.2d 352, 355 (Iowa 2000).

In the case of an express written easement, the intent of the parties must control the interpretation of the easement, and except in cases of ambiguity this is determined by the language of the easement itself. See *Wiegmann v. Baier*,

203 N.W.2d 204, 208 (Iowa 1972). We consider all of the terms of the easement to determine the parties' intent. See *Koenigs v. Mitchell County Bd. of Supervisors*, 659 N.W.2d 589, 594 (Iowa 2003). "Our object is to ascertain the meaning and intention of the parties as expressed by the language used." *Cline v. Richardson*, 526 N.W.2d 166, 168 (Iowa Ct. App. 1994).

The easement in question provides:

Now, this Indenture witnesseth that, in pursuance of said agreement and in consideration of the sum of ONE DOLLAR, paid as aforesaid, the parties of the first part hereby grant unto the party of the second part, his heirs and assigns, full and free right and liberty for him and them, his and their tenants, servants, visitors and licensees, in common with all other persons having the like right, at all times hereafter, to pass and repass, along the vacated public road on the East Two (2) rods of said North Half (N1/2) of the Southeast Quarter (SE1/4), of said Section Twelve (12), for all lawful purposes connected with the use and enjoyment of said premises of the second party as farm land, but for no other purposes.

The language of the easement clearly states the purpose of the easement is for the use of the property as farm land, and for no other purposes. In *Riverton Farms, Inc. v. Castle*, 441 N.W.2d 405, 407 (Iowa Ct. App. 1989), the parties had an easement over certain property for the purpose of farming. The defendants began using the property "for recreational purposes, personal reasons and for harassment of the plaintiff." *Riverton Farms*, 441 N.W.2d at 407. We concluded the defendants had created an additional burden on the servient estate by using the property in a manner exceeding the purpose of the easement. *Id.*

We conclude the district court properly found that under the terms of the express written easement, the easement was limited to use for farming operations. Using the easement for recreational purposes, such as hunting or

riding ATVs, exceeds the terms of the easement. We affirm the decision of the district court, which declared “the easement in question limits Plaintiff to access to his property for any and all activities related to his farming operations.”

AFFIRMED.